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USTR:AMALITO/DOLIVER; PLEASE PASS TO USPTO:  
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SUBJECT: USTR AND COMEX DO A SLOW SLOG

Reftel San Jose 410

¶1. SUMMARY. On short notice, the CAFTA implementation team at Costa Rica's Ministry of Foreign Trade (COMEX) requested to host a USTR/USPTO team for meetings on intellectual property (IP) issues from May 12-14. The work targeted the opportunity to update an IP bill which the constitutional court (Sala IV) returned on unconstitutional grounds on April 4. After two and a half days of highly technical IP talks, USTR and COMEX made incremental progress but substantive issues remain in the areas of enforcement, copyright, patents, and biodiversity. USTR clearly articulated the need to make more progress and finish the remaining work by early July. COMEX agreed to provide to USTR proposals on the remaining IP issues prior to the next scheduled meeting in early June in Washington. Though COMEX is engaged, its commitment to "close the deal" is less than obvious. Although it claims to want to finish the work, it expresses reluctance in advocating for CAFTA-compliant language for the necessary legislation to the deputies in the national assembly. End Summary.

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MEETING ON SHORT NOTICE  
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¶2. A USTR/USPTO team comprised of Andrea Malito and Tanuja Garde of USTR and Caridad Berdud, Neil Graham, and Jim Housel of USPTO met with a COMEX technical team led by Fernando Ocampo, Gabriela Castro, and Susana Vasquez of COMEX on May 12-14. Randall Salazar of the Public Registry and Liliana Rivera of the Ministry of Justice also joined the COMEX team (both are special aides to Vice President Chinchilla). Discussions solely focused on IP issues, specifically enforcement, copyright, industrial property, and biodiversity. Upon the strong recommendation of Costa Rica's Ambassador to the U.S., Tomas Duenas, USTR and COMEX scheduled the meetings on short notice due to COMEX's need to revise an IP bill that the Sala IV returned to the national assembly for recommended changes on April 4. COMEX plans to address the recommended changes by the Sala IV by consulting with USTR and then with national assembly deputies before re-submitting the bill into the legislature.

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MAKING GOOD ON AN OFFER  
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¶3. The discussions were necessarily technical and tedious as the USTR and COMEX discussed legal reasoning, positions, and differences on many of the articles of the IP bill. The meetings further demonstrated USTR's commitment to concluding the technical discussions between COMEX and USTR as the IP mission followed AUSTR Everett Eissenstat's April Costa Rican visit and offer to send a technical mission to Costa Rica (reftel). Also, the USTR team assiduously worked at creative methods to arrive at CAFTA-compliant solutions to bridge difficult differences.

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COMEX'S RESPONSE?  
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14. COMEX accepted many of USTR's suggestions but there were substantive differences in enforcement, copyright, industrial property (patents), and data protection. Though COMEX presented a good face for the meeting, its rationale for not bending or accepting USTR positions on several of the substantive issues was directly related to COMEX's predicted resistance by national assembly deputies. However, during the span of the meetings, COMEX did report on a position change by key supporting deputies on one aspect of IP enforcement. Of concern, though, was COMEX intransigence, at times, against presenting and advocating for changes with the deputies. Though COMEX states its desire to implement CAFTA, its reluctance to advocate to the deputies on difficult issues may complicate the schedule over the coming months.

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ARE THERE OTHER ISSUES?  
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15. At the conclusion of the meeting, USTR and COMEX agreed to meet during the first week of June in Washington as a follow-up meeting on the remaining IP issues and other outstanding issues such as insurance, telecommunications spectrum allocation, and regulations. Before the meeting, COMEX will send to USTR proposals on the substantive IP differences.

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COMMENT  
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16. The meeting produced necessary but incremental change. It was not a "close out" session on IP issues (as COMEX had indicated it would be) and emphasized the bald fact that obstacles still remain. Every session now is critical to a timely completion of Costa Rican CAFTA implementation. During his April visit, AUSTR Eissenstat marked early July as the realistic working deadline when accounting for the USTR certification process, translation, and Sala IV review of the last bill (with a possible return of the bill to the national assembly). The USTR team repeated the same theme. Also whenever COMEX averred to a political discussion, for instance, alluding to officials at COMEX and USTR "brokering" an arrangement or the AUSTR returning to Costa Rica to meet with deputies, USTR firmly reminded COMEX of USTR's congressional mandate to fulfill its obligations of certification. For Costa Rica to complete the necessary work by early July, COMEX, Casa Presidencial, and the national assembly must be the parties that "broker" a deal in order to enter CAFTA into force.

17. USTR Director Malito has cleared this cable.

CIANCHETTE